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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,032	05/11/2006	Roger Philip Sack	020216-000003	6060
24239 7590 08/16/2007 MOORE & VAN ALLEN PLLC P.O. BOX 13706 Research Triangle Park, NC 27709			EXAMINER WACHSMAN, HAL D	
			ART UNIT 2857	PAPER NUMBER
			MAIL DATE 08/16/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/563,032

Applicant(s)

SACK ET AL.

Examiner

Hal D. Wachsmen

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 December 2005.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species:

- I. The species to which claims 2-11 are drawn.
- II. The species to which claims 12-23 are drawn.

2. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

3. *If the species to which claims 2-11 are drawn is elected, further election of subspecies is required as follows:*

- i) The subspecies to which claim 3 is drawn.
- ii) The subspecies to which claim 4 is drawn.
- iii) The subspecies to which claims 5 and 6 are drawn.
- iv) The subspecies to which claims 7 and 8 are drawn.
- v) The subspecies to which claim 9 is drawn.
- vi) The subspecies to which claim 10 is drawn.
- vii) The subspecies to which claim 11 is drawn.

4. *If the species to which claims 12-23 are drawn is elected, further election of subspecies is required as follows:*

- i) The subspecies to which claim 13 is drawn.

Art Unit: 2857

- ii) The subspecies to which claim 14 is drawn.
  - iii) The subspecies to which claims 15-17 are drawn.
  - iv) The subspecies to which claim 18 is drawn.
  - v) The subspecies to which claims 19 and 20 are drawn.
  - vi) The subspecies to which claims 21-23 are drawn.
5. The subspecies are independent or distinct because claims to the different subspecies recite the mutually exclusive characteristics of such subspecies. In addition, these subspecies are not obvious variants of each other based on the current record.
6. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species and subspecies for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim 1 is generic to all species and subspecies and will be examined with whichever species and subspecies is elected.
7. There is an examination and search burden for these patentably distinct species and subspecies due to their mutually exclusive characteristics. The species and subspecies require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species and subspecies would not likely be applicable to another species and subspecies; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.
8. **Applicant is advised that a reply to this requirement to be complete must include (i) an election of a species and subspecies to be examined even though**

Art Unit: 2857

the requirement may be traversed (37 C.F.R. 1.143) **and (ii) identification of the claims encompassing the elected species and subspecies**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species and subspecies may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 C.F.R. 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species and subspecies to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 C.F.R. 1.141.

Art Unit: 2857

9. No telephone call was made to the Applicant to request a telephone call election due to the complexities of the issues at hand (see MPEP 812.01).

10. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hal D. Wachsman whose telephone number is 571-272-2225. The examiner can normally be reached on Monday to Friday 7:00 A.M. to 4:30 P.M..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on 571-272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 2857

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Hal D Wachsman  
Primary Examiner  
Art Unit 2857

HW  
August 11, 2007